Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996	)	CC Docket No. 96-150
	)	
Accounting Safeguards Under the	)	
Telecommunications Act of 1996	)	

GTE's REPLY COMMENTS

GTE Service Corporation and its affiliated domestic telephone operating, long distance and wireless companies

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September 10, 1996

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SUMMARY

In terms of regulating the Independents, the Commission should be exploring how to reduce unnecessarily burdensome cost accounting regulations, rather than making them still more burdensome. The FCC should adopt a policy designed to reduce and eliminate detailed regulation of the Independents as all justification evaporates under price cap regulation and competitive pressures. GTE proposes: (i) adoption of burdens that would direct the staff's energies away from entirely theoretical inquiries where the likelihood of adverse impact on the ratepayer is nil; and (ii) a *test-impact benchmark* approach under which rules would self-limit their application.

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GTE Service Corporation on behalf of its affiliated domestic telephone operating, long distance and wireless companies ("GTE"), in response to the Notice of Proposed Rulemaking, FCC 96-309 (released July 18, 1996) (the "*Notice*") and the comments filed by various parties, submit the following reply comments with reference to implementing the Telecommunications Act of 1996 (the "1996 Act").

DISCUSSION

1. **Insofar as Independents are concerned, the Commission should be exploring how to reduce the burdens of cost accounting regulations, not how to make them more burdensome.**

Far from increasing the complexity and burdens of the FCC's rules affecting cost allocations for Local Exchange Carriers ("LECs" or "exchange carriers") that are Independents, the Commission should be exploring how to reduce those burdens in light of:

(i) the deregulatory mandate of the Telecommunications Act of 1996 -- in particular Section 10 thereof -- that expects the FCC to eliminate unnecessary regulation.

(ii) the reality that the significance of FCC cost allocation policy today is dramatically reduced.

In the case of GTE, more than half its interstate operations come within price caps without sharing, while the price level of the remainder is for the most part well below the price cap level. This means that, as to any particular accounting transaction, it is highly likely that this will have it no significant effect on GTE's rates.

Viewed in light of plausible risk, the danger of LEC cost misallocations having significant adverse effects on the ratepayer is dramatically reduced today as opposed to when the FCC adopted its cost allocation rules nearly ten years ago. And yet more burdensome regulations are proposed. The United States Telephone Association ("USTA") (at 5-9) stresses that there is no justification for imposing more burdens on Independents. Similarly, Ameritech (at ii-iii) warns the Commission against arguments based on nothing more than theoretical possibilities.

2. Demands for ever-expanding regulation of cost accounting miss the point: that any conceivable improper motivation on the part of the Independents is evaporating in light of competitive reality.

AT&T, which sounded every gong in Washington to escape from regulation of itself, continues to argue for ever-more regulation of exchange carriers, including the Independents. Even more strenuous in this same direction is MCI, which appears to view more LEC accounting data as not only cost-free but comprised of pure and undiluted good. Indeed, MCI appears to see more cost accounting data not as a tool but as the objective.

It is not surprising that these parties applaud when, as reflected in the *Notice*, the FCC staff proposes to increase the extent to which the Commission's rules extract and

demand more and more accounting details as those details lose significance. If the FCC follows the ceaseless arguments of these parties, it will move precisely opposite the congressional direction.

And yet in one respect even AT&T is not willing to support the *Notice*. Along with Sprint (at iii), AT&T (at 15) recognizes the value of the prevailing price rule and urges the FCC not to put it aside. AT&T (*id.*) admits "the fact that [prevailing] prices are determined in a market does provide some external discipline."

GTE continues to suggest that, if the prevailing price rule did not already exist, parties would be proposing it as a sound step in the direction of simplifying regulation. And BellSouth (at 30) offers these perceptive comments:

> The Commission seeks to justify the elimination of the "prevailing company price" valuation method because of the alleged difficulty of defining what constitutes a prevailing price. To the extent there is any problem in this area, it is a problem of the Commission's own making. The Commission's audit staff adamantly refuses to apply plain English, common sense meaning to the concept of prevailing company price...."

Footnote omitted. "[I]f a reasonable number of third party purchasers are willing to buy from the affiliate at the stated price," suggests BellSouth (*id.*), "that price may be presumed to be reasonable."[1]

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[1] BellSouth at 30-31 adds: "Trying to impose a "bright line" percentage of sales that will give assurance of reasonableness is to elevate form over substance. Unfortunately, it is precisely such myopic enforcement of the rules that leads to the "difficulty" the Commission staff has experienced under the current rules. The Commission can avoid [this difficulty] by providing its staff with guidelines that focus enforcement efforts on transactions that may have a significant impact on the prices charged by the LEC to its regulated service customers. If the transactions in question do not have that potential, there is no need to conduct an audit."

GTE (at 13-21) related at length two cases -- the *Citizens Utilities* and *Cerritos* matters -- where the FCC staff is dictating accounting treatment of transactions between unregulated entities, transactions as to which there is no likelihood of any adverse impact on the ratepayer, transactions involving only the unregulated books and records of the company. GTE urges the FCC to move away from hyper-regulation, to move in a more constructive direction, signalling unmistakably to its staff that the scope and burdens of regulation should be reduced as the need for ratepayer protection diminishes.

3. In a separate proceeding, or a later stage of this proceeding, the Commission should adopt certain burdens proposed by GTE, together with a *test-impact benchmark* approach under which these rules would self-limit their application.

GTE continues to urge the FCC to leave to a separate proceeding or a later stage of this proceeding any consideration of applying to Independents increased regulatory burdens. And GTE continues to propose that, to place reasonable bounds on reach-through to unregulated matters, the Commission should establish the following burdens that would have to support any argument for the imposition of still more regulation on Independents: (i) showing of consistency with Congressional intent; and (ii) showing a clear necessity in the public interest; and (iii) showing there is no less intrusive means.

To pave the way for the elimination of intrusive regulation, the FCC should consider measures applying the concept of a *test-impact benchmark* proposed by GTE. This means the FCC's rules would be carefully grounded on assuring protection of the interstate ratepayer, and thus would self-limit their application so that the regulatory

intrusion will stop where there is no plausible likelihood of significant adverse impact on the interstate ratepayer.

Respectfully submitted,

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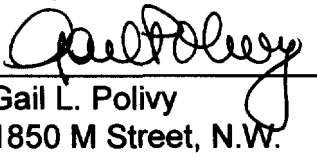
By 

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on September 10, 1996 to all parties of record.

Ann D. Berkowitz